

THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Review Jurisdiction)

Present

Justice Syed Hasan Azhar Rizvi
Justice Aamer Farooq
Justice Syed Arshad Hussain Shah

C.R.P. No. 825/2024 & F.C.R.P. No. 44/2025 in C.P.L.A. No. 304/2022

(for review of the order dated 21.08.2024, passed by the Supreme Court of Pakistan in CPLA No. 304/2022)

Metropolitan Corporation through its Chief Officer, Old Naval Headquarters, G-6, Islamabad (CRP 825/2024)

Capital Development Authority, through its Chairman, Islamabad, and others (FCRP 44/2025)

.....Review Petitioner(s)

Versus

Monal Group of Companies through its Sole Proprietor, Lahore & others (CRP 825/2024)

The Monal Group of Companies, through its Sole Proprietor & other (FCRP 44/2025)

.....Respondent(s)

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|-------------------------------|---|
| For the Review Petitioners | : Barrister Qasim Chohan, ASC
(in CRP 825/2024) |
| | Ms. Misbah Gulnar Sharif, ASC
Mr. Shehryar Tariq, Chief Legal Advisor
(in FCRP 44/2025) |
| For the Federation | : Ch. Aamer Rehman, Addl. AGP |
| For ICT | : Mr. Naveed Hayat Malik, AG Islamabad
Mr. Jameel Fayyaz, State Counsel |
| For Respondent No.1/The Monal | : Mr. Muhammad Ahsan Bhoon, ASC
Mr. Saad Mumtaz Hashmi, ASC
(in both cases) |
| For Respondent No.2/MCI | : Barrister Qasim Chohan, ASC
(in FCRP 44/2025) |
| Date of Hearing | : 14.07.2026 |

ORDER

Syed Hasan Azhar Rizvi, J.- The present controversy originated from a civil suit titled ‘*The Monal Group of Companies v. Capital Development Authority and 2 others*’, instituted by the Monal Group of Companies through its sole proprietor, Luqman Ali Afzal, respondent No.1 in both the captioned review petitions (**‘the respondent’**), against the

Metropolitan Corporation, Islamabad (**‘the Corporation’**), the petitioner in CRP No. 825 of 2024, the Capital Development Authority (**‘the CDA’**), the petitioner in FCRP No. 44 of 2025 (both hereinafter collectively referred to as **‘the petitioners’**), and the Remount, Veterinary and Farms Directorate, General Headquarters, QMG Branch, Rawalpindi (**‘RV&FD’**), seeking a declaration, permanent and mandatory injunction. The respondent's case therein was that, pursuant to the approval of the Federal Minister for Interior, he obtained a restaurant site at Gokina Moor, Pir Sohawa, Islamabad, from the CDA under a lease agreement dated 10.03.2006 (**‘the 2006 Agreement’**) for a period of fifteen years commencing from 01.08.2006. At the leased site, the respondent established the Monal Restaurant as an eatery open to the general public. However, on 24.06.2019, the respondent received a letter from the RV&FD stating that, with effect from 08.11.2016, ownership and control of approximately 8,603 acres of land in the Margalla Hills National Park (**‘the MHNP’**), including the restaurant site, had reverted to the RV&FD as its original owner since 1910. Subsequently, the respondent received another letter dated 28.08.2019 from the RV&FD directing him to deposit rent with it with effect from November 2016 onwards. Thereafter, the respondent repeatedly approached the petitioners through various letters and reminders, seeking clarification regarding the aforesaid position and directions as to the authority with whom the rent was to be deposited. However, no response was received from the petitioners. Consequently, the respondent executed another lease agreement dated 30.09.2019 (**‘the 2019 Agreement’**) with the RV&FD for a period of seventeen years, commencing on the date of its execution, thereby enabling him to continue operating the Monal Restaurant without interruption.

2. As the term of the 2006 Agreement with the CDA was approaching its expiry, the respondent instituted the aforementioned suit on 27.02.2021, seeking a declaration that he was the lawful lessee of the RV&FD and that the CDA had no right to demand or receive any rent from him in respect of the Monal Restaurant site. He further sought recovery of the rent already paid to the CDA under the 2006 Agreement. Meanwhile, on 31.07.2021, the Metropolitan Corporation, Islamabad, also instituted a separate suit titled *‘Metropolitan Corporation, Islamabad v. Mr. Luqman Ali Afzal’* against the respondent, seeking recovery of possession of the restaurant site through his eviction, along with a decree for permanent

injunction. In the earlier suit, the application of the respondent for the grant of an *ad interim* injunction was dismissed by the Civil Court vide order dated 27.02.2021. The civil appeal preferred thereagainst was also dismissed by the District Judge, Islamabad (West), vide order dated 01.03.2021. Aggrieved thereby, the respondent challenged the said orders by filing Civil Revision No. 13 of 2021 before the Islamabad High Court (**'the High Court'**). Later on, the application of the respondent for the grant of a temporary injunction under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908, was also dismissed by the Civil Court vide order dated 04.10.2021. The respondent also assailed the legality of that order by filing a First Appeal Against Order (F.A.O.) No. 111 of 2021 before the High Court.

3. At the relevant time, several public interest writ petitions regarding the protection, preservation, and management of the MHNP had been pending before the High Court since 2011. While deciding one of them, i.e. the Writ Petition No. 4245 of 2014, the High Court clubbed together all the other writ petitions of a similar nature, along with the aforementioned Civil Revision and the F.A.O. Finally, the High Court, vide a short order dated 11.01.2022 followed by a consolidated judgment containing detailed reasons, allowed the writ petitions and dismissed the Civil Revision and the F.A.O. filed by the respondent. In the said judgment, the High Court, *inter alia*, held that the RV&FD lacked the jurisdiction and legal authority to execute the 2019 Agreement with the respondent and, consequently, declared the said Agreement to be void and of no legal effect. The High Court further directed the CDA to conduct an inquiry to identify the officials responsible for permitting or facilitating the construction of the Monal Restaurant and other buildings within the protected area of the MHNP in contravention of the applicable law. Feeling aggrieved, the respondent assailed the legality of the said judgment by filing Civil Petition Nos. 304 and 305 of 2022 before the Supreme Court of Pakistan. During the pendency of those petitions, the Islamabad Wildlife Management Board also instituted a petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'the Constitution'**), seeking recovery of possession of the Visitor Information Centre, alleging that it had been forcibly taken over by the CDA.

4. The above matters were decided by the Supreme Court vide a short order dated 11.06.2024, followed by a consolidated judgment

containing detailed reasons dated 21.08.2024 (**‘impugned judgment’**). Through this judgment, the Supreme Court not only upheld the impugned judgment of the High Court but also made general declarations that any lease, license, allotment, or permission granted by the CDA, the RV&FD, or any other department or authority for the operation of restaurants within the MHNP was contrary to the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 (**‘the Ordinance of 1979’**) and, as such, was of no legal effect. Consequently, the same were set aside. Moreover, it was also held that the Wildlife Management Board was entitled to withdraw the amount of rent deposited by the respondent in the Court for the preservation, conservation, and proper utilization of the MHNP. Subsequently, the review petitions filed by the aggrieved parties, excluding the present petitioners, were also dismissed by the Supreme Court vide judgment dated 03.09.2024. While deciding those review petitions, the Supreme Court, in addressing the arguments relating to the proceedings pending before the lower *fora*, observed that once a matter has been decided by the Supreme Court, its judgment is binding on all Courts in Pakistan to the extent provided under Article 189 of the Constitution. Accordingly, if any Intra-Court Appeal or any other proceeding relating to the matters adjudicated upon in the said judgment remained pending before the High Court or any other Court, the judgment of the Supreme Court would govern such proceedings, with the result that any such Intra-Court Appeal or other proceeding would become infructuous. Hence, the present petitions.

5. We have heard the learned counsel for the parties and have also carefully considered the relevant record. At the very outset, we have observed that the High Court, in particular, overlooked the fundamental legal position that the Civil Revision and the F.A.O. before it arose from interlocutory proceedings only, whereas the substantive disputes remained *sub judice* before the Civil Court in the form of civil suits. Those disputes were yet to be adjudicated upon after the parties had been afforded a full opportunity to lead their respective evidence, and the same had been properly appreciated in accordance with law. The High Court was required to decide those proceedings independently by making only tentative observations so that the merits of the main cases pending adjudication remained uninfluenced. However, the High Court, while transgressing the limits of its jurisdiction, proceeded to adjudicate the

entire controversy pending before the Civil Court and rendered a final determination by holding that the RV&FD lacked the jurisdiction and authority to execute the 2019 Agreement with the respondent and by declaring the said agreement to be void and of no legal effect. Not only did the High Court make findings in respect of the Monal Restaurant, but it also made observations regarding other restaurants that were not before it and directed the CDA to conduct an inquiry to identify the officials responsible for permitting or facilitating the construction of the Monal Restaurant and other buildings within the protected area of the MHNP in violation of the applicable law. Similarly, the Supreme Court, with respect, also failed to discharge its judicial duty as the then apex Court of last resort and affirmed the judgment of the High Court, thereby entailing serious consequences for the petitioners before it. It would be relevant to mention here that where a Court, by adopting a particular procedure, does something that it never intended, thereby resulting in a miscarriage of justice, it possesses inherent jurisdiction to rectify such an error. However, with respect, the Supreme Court once again failed to correct the said illegality while deciding the review petitions.

6. We are, therefore, constrained to observe that the present case represents an exceptional instance where the limits of judicial power were transgressed, resulting in a grave miscarriage of justice. In the course of deciding interlocutory proceedings arising out of pending civil suits, findings of a final and conclusive nature were recorded on questions that properly fell within the exclusive domain of the Civil Court after the recording and appreciation of evidence. Those findings not only prejudged the disputes pending before the Civil Court but also adversely affected the rights and liabilities of several persons who were neither parties to the proceedings nor afforded an opportunity of being heard as per the mandate of Article 10-A of the Constitution. The prejudice was further compounded in the review jurisdiction, where the present petitioners, who were arrayed as respondents, despite being directly affected by the impugned judgment, were not afforded an effective opportunity to present their case before the Court. A judgment affecting the rights of persons who have not been heard cannot ordinarily be permitted to attain finality merely because it has been pronounced by the highest Court. We are, therefore, firmly of the view that the duty to correct an error is an obligation cast upon every Judge by the solemn oath taken upon assuming judicial office to preserve, protect, and

defend the Constitution and the law of Pakistan. The power to rectify a manifest wrong does not depend upon the existence of an enabling procedural rule; rather, it inheres in the very function of the Court. Whenever an error has occasioned injustice, it is not merely within the Court's authority, but its bounden duty to correct it, for the administration of justice cannot permit a manifest illegality or injustice to endure merely on account of procedural constraints. In this regard, reference may be made to Chairman, Board of Intermediate & Secondary Education, Lahore and another v. Ali Mir (1984 SCMR 433) and Suba through Legal Heirs v. Fatima Bibi through Legal Heirs and others (1996 SCMR 158).

7. It may further be observed that justice is a virtue which transcends all barriers, and that rules of procedure, technicalities, or procedural formalities cannot be permitted to obstruct the administration of justice. Law must bend in aid of justice. Accordingly, where the Court is satisfied that an error identified in a review petition arose from a mistaken assumption of fact or law, and that the earlier judgment would not have been rendered but for such erroneous assumption, the perpetuation of which would result in a miscarriage of justice, nothing precludes the Court from recalling or rectifying the error in the exercise of its review jurisdiction. It is, therefore, concluded that the above-noted errors are glaring and self-evident, found floating on the surface of the record, and have a material bearing on the final result of the case. Therefore, for detailed reasons to be recorded later, and subject to such amplification and/or explanation therein as is considered appropriate, the above review petitions are allowed, and the impugned judgment is reviewed in the following terms:

- I) that the questions relating to the entitlement to, or ownership of, the restaurant site, its handing over to the respondent by way of lease, and the recovery of rent therefrom involve disputed questions of fact requiring adjudication by the competent Civil Court after allowing the parties to lead their respective evidence. Consequently, the conclusion recorded by the Supreme Court in the impugned judgment that any lease, licence, allotment, or permission granted by the CDA, the RV&FD, or any other department or authority for the operation of restaurants within the MHNP was contrary

to the Ordinance of 1979 and was of no legal effect, is held to be contrary to law and the facts of the case and is, to that extent, set aside;

- II) that the MHNP forms an integral part of the Islamabad Capital Territory and is, therefore, subject to the laws, rules, and regulations applicable to the Federal Capital. Consequently, the approval of any construction plan or building activity for public purpose within the MHNP falls within the statutory jurisdiction of the CDA. Accordingly, the findings recorded by the Supreme Court in the impugned judgment that the Islamabad Wildlife Management Board is entitled to withdraw the amount of rent deposited by the respondent in Court for the preservation, conservation, and proper management of the MHNP, and that the Board may regulate certain activities within the MHNP by issuing licences, are contrary to law and are, therefore, set aside. Resultantly, all matters regarding the administration of MHNP are to be regulated by the CDA strictly in accordance with the applicable law, rules and regulations;
- III) that, since the Islamabad Wildlife (Protection, Preservation, Conservation and Management) Ordinance, 1979 has been repealed, the Nature Conservation and Wildlife Management Board constituted under section 3 of the Islamabad Nature Conservation and Wildlife Management Act, 2024 is responsible for implementing the provisions of the Act, including ensuring that the construction of rest houses, hotels, and other buildings for the public within the MHNP complies with sub-sections (3) and (4) of section 12 thereof. The High Court lost sight of the above-noted legal position and rendered a judgment that caused a grave miscarriage of justice and, as such, is not sustainable in law;

- IV) That the concerned Civil Court shall take up the aforesaid suits together by consolidating them and proceed from the stage at which they stood immediately before the impugned judgments were rendered. The plaintiffs in the suits at any appropriate time may file a fresh application for the interim relief regarding subject property to the suits before the trial court, which if and when are filed shall be decided in accordance with the law without being influenced by the judgment/orders passed by the Supreme Court of Pakistan, Islamabad High Court, District Judge Islamabad or its earlier orders. Upon the determination of the said application, the Civil Court shall proceed to decide the consolidated suits expeditiously on their own merits after providing the parties equal, fair, and adequate opportunity to produce their respective evidence; and
- V) that, in view of the above, it follows as an inevitable legal consequence that, once the impugned judgment of the Supreme Court has been reviewed to the aforesaid extent, every consequential or derivative judgment founded thereon, including the review judgment, cannot survive independently and must also fall.

Resultantly, Miscellaneous Application No. 3108 of 2026 filed on behalf of the respondent, along with any other pending miscellaneous applications, stands disposed of in the above terms. No order as to costs.

Judge

Judge

Judge

Islamabad, the
13th July, 2026.

APPROVED FOR REPORTING

Ghulam Raza/*